

SOUTHERN ENVIRONMENTAL LAW CENTER

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October 23, 2014

VIA E-MAIL AND US MAIL

Lawana Woodard
U.S. Environmental Protection Agency
Region 4 Freedom of Information
SNAFC Bldg.
61 Forsyth Street, S.W., 9th Flr
Atlanta, GA 30303
woodard.lawana@epa.gov

Re: Freedom of Information Act Request: Spring Creek Farms, LLC (Pamlico County, North Carolina)

Dear Ms. Woodard:

Pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552, on behalf of our client, the North Carolina Coastal Federation, the Southern Environmental Law Center ("SELC") respectfully requests all records in the possession of the Environmental Protection Agency ("EPA") with respect to Spring Creek Farms, LLC's development of the Atlas Tract in Pamlico County, North Carolina. I have attached a letter from Jim Giattina regarding the project as a reference to assist the Agency in identifying related records.

For the purposes of this request, the term "records" includes all written, printed, recorded or electronic materials, communications, correspondence, memoranda, notations, copies, diagrams, charts, books, papers, maps, photographs, data, tables, spreadsheets, formulas, directives, observations, impressions, contracts, letters, messages, and mail in the possession, custody, or control of EPA.

We request that you waive any search and duplication fees and provide the requested records without charge, or at a reduced charge, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii). Courts have recognized that Congress intended FOIA's fee waiver provision to be "liberally construed in favor of waivers for noncommercial requesters." McClellan Ecological Seepage Situation v. Carlucci, 835 F.2d 1282, 1284 (9th Cir. 1987).

The disclosure of the requested materials would be in the public interest because it is likely to contribute significantly to public understanding of EPA's evaluation of activities on the Atlas Tract, and is not in the commercial interest of SELC. SELC is a 501(c)(3) non-profit organization working to protect the natural resources of the Southeast and, in particular, to gather, analyze, and disseminate public information about coastal wetland and water quality issues in North Carolina. SELC monitors and participates in Clean Water Act permitting processes in North Carolina, and seeks to inform and educate our members and the public

regarding the value of wetlands and the application of the laws protecting them. The North Carolina Coastal Federation is specifically focused on informing coastal residents about environmental issues such as wetland determinations through its public outreach, including through its website and Coastal Review Online.

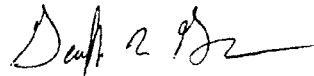
Our intended use of the requested materials is to glean a greater understanding of the Atlas Tract project and to continue to disseminate information about the project to the public through our respective websites and the North Carolina Coastal Federation's Coastal Review Online. All of the activities described above have been, and will continue to be, provided to the public by SELC and our client for no payment.

Should our request for reduced or waived fees be denied, we are prepared to bear the reasonable costs necessary to fulfill this request, although we request that you contact us before processing this request to discuss fees. We reserve our rights to appeal a denial of our request for a fee waiver or reduction.

FOIA directs a responding agency to make a "determination" on any request within twenty working days of receipt. 5 U.S.C. § 552(a)(6)(A). We specifically request that you comply with the statutory deadline. Should our request be denied, we ask that you inform us of the grounds for denial and the specific administrative appeal rights that are available. Id. In the event that any documents or portions of any document are withheld under claim of privilege, we request a privilege log identifying the document and grounds supporting the claim of privilege.

Finally, because the volume of records responsive to our request may be large, we are willing to work with your agency to minimize the work necessary to respond. We are available to review documents prior to any duplication and are willing to discuss other ways to facilitate the production of the requested public records, for instance, by narrowing our request if necessary. Please contact me at 919-967-1450 or ggisler@selcnc.org by November 21, 2014, to arrange for inspection, copying, and electronic transmission of the requested documents.

Sincerely,

A handwritten signature in black ink, appearing to read "Geoffrey R. Gisler", with a stylized flourish at the end.

Geoffrey R. Gisler

GRG/rgd



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4

ATLANTA FEDERAL CENTER

61 FORSYTH STREET

ATLANTA, GEORGIA 30303-8960

APR 10 2014

CERTIFIED MAIL 7012 1010 0002 0759 7042
RETURN RECEIPT REQUESTED

Spring Creek Farms, LLC
Mr. Benjamin L. King
346 MLK Boulevard, Suite 95
Clinton, North Carolina 28562

Re: Spring Creek Farms Site

Dear Mr. King:

I am writing to discuss the findings of a recent United States Environmental Protection Agency Region 4 field investigation of the Spring Creek Farms site located near Merritt, Pamlico County, North Carolina, near 35° 4' 47" north latitude and 76° 41' 24" west longitude (Site). The Site is also referred to as the Atlas Tract, an approximately 4,600 acre parcel mapped by the United States Fish and Wildlife Service's National Wetlands Inventory as containing predominantly forested wetlands. Additionally, the Natural Resource Conservation Service has determined that a majority of the Site contains hydric soils. On December 3-4, 2013, the EPA and the U.S. Army Corps of Engineers (Corps) conducted a joint site inspection of the Site. Mr. Abel Harmon, consultant for Spring Creek Farms, was also present during the inspection.

During that inspection the group dug pits and looked at hydrology and soils at several areas on the Site including the "251-acre" site and one forested reference area near this tract as well as three areas off Florence Road including a recently harvested "400 acre" site. Light rain was falling during the inspection of the three areas located off Florence Road, but two of the three areas appeared to be wetlands while one area was an upland timbered area. At the "400-acre" site, the EPA and the Corps inspectors found wetland hydrology within 12 inches of the surface at several soil pits. At this location Mr. Harmon noted that most but not all of the antecedent forestry ditches on the 400-acre site had been re-excavated to former depths. The Corps advised Mr. Harmon to avoid further ditch maintenance on the tract until we could reconcile the jurisdictional limits of the 400-acre site. Mr. Mike Wylie, of my staff, contacted Mr. Harmon on February 10, 2014, to discuss the findings from the inspection. During that call, Mr. Harmon informed Mr. Wylie that all the forestry and roadside ditch maintenance activities on the Atlas Tract were now complete on the Atlas Tract.

As you are aware, there is significant local interest in the status of potential jurisdictional wetlands on the Atlas Tract. Both the Corps and the EPA have been contacted by interested parties regarding Spring Creek Farms' activities on the Site and whether the current ditch maintenance and land clearing activities are in compliance with the Clean Water Act (CWA).

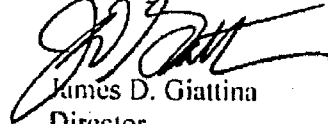
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The EPA and the Corps found that the forestry ditches on the Atlas Tract appeared to remove wetland hydrology on two of the sites we sampled (i.e., the 251-acre site and one of the wetland areas off Florence Road). The EPA and the Corps do not have sufficient information to make a final determination regarding wetland hydrology on the 400-acre tract; however, we are concerned that recent ditch maintenance activities may have adversely impacted the Site.

The EPA and the Corps have several outstanding issues that need to be resolved with Spring Creek Farms before any further mechanical land clearing or ditch excavation and/or maintenance occurs on the Atlas Tract. The original ditch excavation apparently occurred under the pretext of minor drainage in association with the 404(f) silviculture exemptions. The ditches appear to have removed or are capable of removing wetland hydrology and are not considered minor drainage ditches exempt under the CWA. Ditch maintenance, an activity that is normally exempt under the CWA 404(f) exemptions, is not an exempt activity if the original forestry ditches exceeded minor drainage and drained the Atlas Tract without authorization under the CWA. Areas of former wetlands on the Atlas Tract, that appear to have the hydrology removed without authorization, should be considered waters of United States unless new evidence dictates otherwise. Finally, please do not conduct any further ditch maintenance, ditch construction or land clearing activities on the Atlas Tract until a meeting can be arranged with the EPA to discuss these issues.

Please contact Ms. Molly Davis, of my staff, at (404) 562-9236 or please have your attorney contact Mr. Philip Mancusi-Ungaro at (404) 562-9519 to arrange a meeting to discuss these important issues.

Sincerely,



James D. Giattina

Director

Water Protection Division

cc: Mr. Scott McLendon
U.S. Army Corps of Engineers, Wilmington District